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4 SCOTT JOHNSON,
5 Plaintiff,
6 v.
7 WEST VALLEY SHOPPING CENTER,
8 Defendant.

9 Case No. 21-cv-04295-SI

10 **ORDER VACATING APRIL 1, 2022
CASE MANAGEMENT CONFERENCE
AND ORDER TO SHOW CAUSE WHY
CASE SHOULD NOT BE DISMISSED
FOR FAILURE TO SERVE
DEFENDANT**

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12 This case was originally filed on June 6, 2021 against Amarin Thai San Jose, Inc.
13 (“Amarin”). On November 16, 2021, Amarin filed a motion for administrative relief stating, *inter*
14 *alia*, that it was wrongly sued because its lease does not extend to the outdoor dining area where
15 Mr. Johnson allegedly encountered access barriers. On December 10, 2021, the Court held an initial
16 case management conference and directed Mr. Johnson to review Amarin’s lease and file an
17 amended complaint by December 20, 2021.
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On December 14, 2021, plaintiff filed an amended complaint dropping Amarin as a
defendant and naming West Valley Shopping Center. Plaintiff submitted a proposed summons on
January 18, 2022, and summons was issued on January 19, 2022.

On March 24, 2022, plaintiff filed a request to continue the April 1, 2022 case management
conference, stating that “Plaintiff is yet to obtain proper service on Defendant West Valley Shopping
Center, Inc.” Dkt. No. 31. Plaintiff’s request for a continuance of the case management conference
does not provide any explanation for the failure to serve defendant.

Pursuant to Federal Rule of Civil Procedure 4(m), “[i]f a defendant is not served within 90
days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff –
must dismiss the action without prejudice against that defendant or order that service be made within

1 a specified time.” The complaint should have been served on West Valley Shopping Center by
2 March 14, 2022.

3 Accordingly, plaintiff is hereby ORDERED TO SHOW CAUSE in writing no later than
4 March 30, 2022, why this case should not be dismissed without prejudice for failure to serve
5 defendant within the time limit provided by Rule 4(m). After receipt of plaintiff’s response the
6 Court will either dismiss this action or set a new deadline for service.

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8 **IT IS SO ORDERED.**

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10 Dated: March 24, 2022

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13 SUSAN ILLSTON
14 United States District Judge
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